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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1753

SLIDELL FORD TRACTOR, INC.,
Petitioner,

versus

FORD MOTOR COMPANY AND
FORD MOTOR CREDIT COMPANY,
Respondents.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For
The Fifth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (App., pp. 5a-10a of Petition) and the opinion of the Court of Appeals for the Fifth Circuit (App. pp. 2a-5a of Petition) are both unreported.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Analysis of the twelve questions set forth in the petition in light of the record shows that the only question actually before the Court is: Whether the trial judge abused his discretion in directing a verdict in favor of respondents at the conclusion of petitioner's direct evidence.

STATEMENT

This is an action by Slidell Ford Tractor, Inc. (hereinafter "Slidell") to recover damages from Ford Motor Company (hereinafter "Ford") for alleged breach of its dealership agreement, alternatively from Ford Motor Credit Company (hereinafter "Credit") for alleged breach of its agreement to finance Slidell's purchases of tractors from Ford, and further alternatively from Ford and Credit for allegedly conspiring to restrain trade by requiring Slidell to finance its purchases through Credit.[1]

Petitioner was a franchised Ford tractor dealer at Slidell, Louisiana, for a period of sixteen months (March 1973 to July 1974).[2] Although it admittedly was

1 App. 5-13; amended on 27 Sept. 1976, App. 27

not required to do so, Slidell also signed an agreement with Credit to finance its purchases from Ford. Petitioner paid 5% of the cost of tractors purchased from Ford and financed 95% of the cost under a fully revocable line of credit from Credit, on which Ford paid interest for the first twelve months.[3] To secure its line of credit, petitioner executed a general chattel mortgage in favor of Credit under the terms of which tractors on hand could be sold and tractors subsequently received were automatically covered;[4] in addition, petitioner filed a financial statement and was required to file periodic statements to insure its continued credit-worthiness.[5]

In its application to Credit, petitioner represented that a stated sum would be invested in the business and committed itself to make the investment in this amount.[6] The investment agreed on was never made in the full amount promised and, being concerned over petitioner's ability to meet its obligations, for this reason and because of Slidell's unsatisfactory operating results, and the deficit in its bank accounts,[7] Credit notified petitioner on 16 June 1974 that its line of credit was suspended.[8] Credit of course notified Ford

3 App. 76

4 App. 137-156; App. 160

5 App. 160

6 App. 64-68

7 App. 371

8 Testimony of B. Harvill, App. 553-554; App. 175, Exhibit Slidell 16; App. 507

as well and, since existence of a line of credit was indispensable to petitioner's ability to carry on its business, Ford representatives called on petitioner the following day and suggested that it resign as a dealer, which petitioner did by letter dated 17 July 1974.[9]

Upon reflection, petitioner's principal shareholder and president, Emory L. Graves (hereinafter "Graves"), concluded that he had made a mistake in signing the resignation[10] and filed the instant action seeking damages from Ford and alternatively from Credit for alleged breach of contract and further alternatively against Ford and Credit for alleged violation of the Anti-trust Laws.

As the basis for its breach of contract claim, Slidell alleged that Ford had in effect guaranteed that operation of the dealership would generate profits in the amount set forth in Ford's prospectus and that tractors would be supplied in numbers sufficient to yield such profits, despite the disclaimer to the contrary in the prospectus.[11] This contention was refuted at the trial by the testimony of petitioner's president that he was aware that Ford was giving him only an opportunity and that there was no commitment in the agreement or elsewhere to any assured return:[12]

9 Exhibit Slidell 13, App. 108

10 App. 303-4

11 App. 60

12 App. 324; App. 456

"Q. Well, then is your answer at this time that you recognized that Ford was not guaranteeing results, but only giving you an opportunity?"

A. Yes. They were not guaranteeing any results.

Q. And yes, Ford was merely giving you an opportunity?

A. Yes.[13]

As a basis for its antitrust claim, Slidell alleged that it was compelled to use Credit as a condition of obtaining the Ford dealership,[14] despite the explicit recital in the dealership application that the application to Credit for financing should be made only if Slidell desired to do so:

"If the applicant desires this service, copies of the following documents are attached."[15]

This contention was also refuted at the trial by petitioner's president's testimony that there was no obligation that petitioner use Credit.[16]

The case was tried to a jury and, at the conclusion of petitioner's direct evidence, the trial judge directed a verdict in favor of respondents dismissing the action

13 App. 456

14 Complaint paragraph 27, App. 11-12

15 Exhibit Slidell 7, App. 64-68; App. 130-134 §4

16 App. 468-470, Testimony of E. L. Graves

in its entirety. Petitioner filed a timely appeal to the United States Court of Appeals for the Fifth Circuit which placed the appeal on its Summary Calendar and, on 16 March 1978, issued a per curiam opinion upholding the trial judge's action in directing the verdict for respondents and affirming the judgment of dismissal.

ARGUMENT

No constitutional issue or principal of federal law is presented by this application nor is any other ground asserted which would warrant review by this Court on certiorari. The petition for certiorari merely sets forth in detail petitioner's dissatisfaction with the action of the District Court and Court of Appeal and seeks a review of all of the evidence on which the District Judge granted respondents' motion for a directed verdict. No broad or general issue of law is presented by the application; the sole question presented is whether, on the facts of this particular case, the trial judge properly directed a verdict.

I.
The Decision Below Is Clearly Correct

The predicate for petitioner's breach of contract claim was the prospectus prepared by Ford and delivered to petitioner prior to signing of the dealership agreement. As pointed out by the Court of Appeal, this prospectus contained no guarantee that the actual earnings would approximate the projected earnings or, indeed, that there would be any actual earnings but, on the contrary, was merely a projection of estimated future earnings for a typical dealership.

On the contrary, the prospectus included a disclaimer of any guarantee,[17] clearly printed thereon, and petitioner's president, Graves, testified that he knew that Ford was only giving him an opportunity to earn the sums estimated in the prospectus and that document signed by him contained no commitment from Ford:

> Q. My question is whether you can point to any document in which there was any commitment, guarantee, or obligation on Ford's part to deliver you twenty-one tractors or any other number of tractors.
>
> A. No.[18]

The basis of the contention that Ford and Credit violated the anti-trust laws was that petitioner was compelled to use Credit as a condition of obtaining the dealership from Ford. This contention was refuted by the testimony of petitioner's president, Graves, who admitted that there was no such requirement and this admission was corroborated by the document signed by him.[19]

The consequence of this, in the words of the Court of Appeal, was that:

> ". . . Both the documentary evidence and the testimonial evidence failed to provide a basis

17 App. 60; App. 134; Exhibit Slidell 10, App. 92-102 at 101
18 App. 324; App. 456
19 App. 470, Testimony of E. L. Graves

for either of Slidell Ford's causes of action. Because 'reasonable men could not have arrived at a contrary verdict', the district judge was correct in directing a verdict for Ford Motor and Ford Credit. See Boeing Company v. Shipman, 411 F.2d 365, 374 (5th Cir. 1969) (en banc)."

II.

There Is No Important Question Of Federal Law

The twelve "Questions Presented for Review" set forth in the application[20] raise no important questions of federal law. Indeed, most of them raise no questions of law at all. Although, with the exception of Number 2, each of these "Questions" is phrased in terms of an alleged denial of due process of law, their consideration necessitates review in detail of the testimony and exhibits offered by petitioner at the trial.[21] In short, the application herein merely seeks review of the correctness of the decision of the trial court on the facts of the instant case.

Petitioner's question Number 3 purports to raise an issue of law and claims the trial "court directed a verdict in an anti-trust suit on the grounds that Slidell did not prove damages equal to the jurisdictional amount in United States District Court, when there is no

20 Pages 2-7

21 The twelve "Questions Presented on Review" in the application, save for the addition to eleven of them of the contention that petitioner is thereby deprived of due process, are identical with the Assignment of Errors contained in petitioner's brief to the Court of Appeals.

jurisdictional amount requirements under the anti-trust laws of the United States."[22] This is a clear misstatement of the trial court's holding. In fact, the judge declared:

> "In summary, in viewing the evidence most favorable to the plaintiff, the only claims that may have been proven amount of $6,692. These claims are in breach of contract and in tort and of course must rely upon the diverse jurisdiction of the court. Failing to meet jurisdictional amount, these claims are dismissed.
>
> On all other questions, plaintiff has failed entirely to present a case for the jury's decision and therefore it is ordered that a directed verdict be entered in favor of the defendants, Ford Motor Company and Ford Motor Credit Company."[23]

Thus, it is clear that the only claims dismissed for lack of jurisdictional amount were petitioner's tort and breach of contract claims and not the anti-trust claims.

As a further ground for error, petitioner in question Number 5 alleges that the trial judge directed a verdict "based on his conclusion that the future profits of a business can only be computed on its past profits." This statement is also a misstatement of the record. The record in no way suggests that future profits can be computed only upon the basis of past profits. On the

22 Petition for Cert., p. 3

23 App. 731

contrary, the trial court recognized that future profits can be projected upon facts other than past profits and concluded there were no facts in evidence upon which project any damage since none was proved.[24]

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

Counsel for Respondents

26 July 1978

PROOF OF SERVICE

I, Harry McCall, Jr., one of the attorneys for Ford Motor Company and Ford Motor Credit Company, respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 26th day of July, 1978, I served a copy of the foregoing Brief in Opposition to the Granting of Petition for Certiorari on the petitioner to its attorney of record, as follows:

Gerard H. Schreiber, Esq.
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24 App. 125

by mailing a copy in duly addressed envelope, with first class postage prepaid.

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